

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X 07 Civ. 6966  
TOWN OF GREENBURGH,

Plaintiff,

against,

SPECTRASERV, INC. and LIBERTY MUTUAL  
INSURANCE COMPANY,

Defendants.

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SPECTRASERV, INC. and LIBERTY MUTUAL  
INSURANCE COMPANY,

Third-Party Plaintiffs,

against,

M.G. McLAREN, P.C., and DOLPH ROTFELD  
ENGINEERING, P.C.,

Third-Party Defendants.

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### **RELIEF SOUGHT**

Third-party defendant Dolph Rotfeld Engineering, PC respectfully submits this motion pursuant to Fed. R. Civ. P. 12(b)(6) for an Order dismissing the third-party complaint of Spectraserv, Inc. and Liberty Mutual Insurance Company.

### **GROUND FOR RELIEF**

The motion is made on the ground that this third-party complaint fails to state a claim on which relief may be granted. As is more fully explained in the accompanying Memorandum of Law:

1. Third-party plaintiff's claims of negligence and tortious interference are barred by CPLR §214(4),(6), the applicable statutes of limitations, and
2. Third-party plaintiff's tortious interference claim should be dismissed as a matter of law as an agent cannot be held liable for inducing its principal to breach a contract with a third party.

The court granted third-party defendant Dolph Rotfeld Engineering, PC permission to make the instant motion at a pre-motion conference on June 20, 2008.

### **RECORD SUPPORTING MOTION**

This motion is based on the following documents:

1. the attached Notice of Motion;
2. the accompanying Memorandum of Law;
3. the Complaint of the Town of Greenburgh (Attached as Exhibit A);
4. the Third-party Complaint of Spectraserv and Liberty Mutual Insurance Company;  
(Attached as Exhibit B)
5. the Answer and Counterclaim of Spectraserv and Liberty Mutual Insurance Company  
(Attached as Exhibit C)

**WHEREFORE**, DOLPH ROTFELD ENGINEERING, P.C. respectfully requests that the Court issue an Order dismissing Third-Party Plaintiffs SPECTRASERV, INC. and LIBERTY

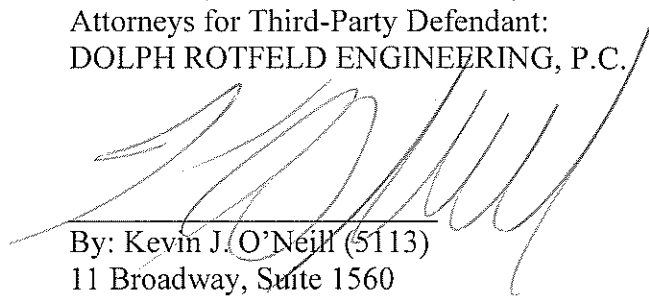
MUTUAL INSURANCE COMPANY Third Party Complaint against DOLPH ROTFELD  
ENGINEERING, P.C.; or issuing any other relief the court deems just and proper.

Dated: New York, New York  
July 9, 2008

Yours, etc.,

**GOGICK, BYRNE & O'NEILL, LLP**

Attorneys for Third-Party Defendant:  
DOLPH ROTFELD ENGINEERING, P.C.



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